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Security Information

STATUTES APPLICABLE
TO THE
MANAGEMENT AND PROTECTION
OF
FEDERAL RECORDS

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Records created or received by the Central Intelligence Agency in pursuance of the National Security Act of 1947 (Public Law 253 - 80th Congress) as amended by the Central Intelligence Agency Act of 1949 (Public Law 110 - 81st Congress), or in connection with the transaction of public business, are the property of the United States Government. In determining the degree of propriety, as well as the creation, maintenance, protection, preservation and disposal of these records, the following references shall be considered:

1. The National Security Act of 1947 as amended by the Central Intelligence Agency Act of 1949.
2. The Federal Property and Administrative Services Act of 1949 (Public Law 152- 81st Congress)
3. The Federal Records Act of 1950 (Title 5, Public Law 754)
4. U.S. Code
5. Federal Reports Act (Public Law 831)
6. Administrative Procedure Act (Public Law 404)
7. The Records Disposal Act, Approved July 7, 1943 (57 Stat. 380, 44 USC 366), as amended July 6, 1945 (59 Stat. 434)
8. Bureau of the Budget Bulletin 51-14, dated May 22, 1951
 - a. As implemented by the Central Intelligence Agency.
9. General Services Administration Regulations
10. Records Program in the Central Intelligence Agency

* The National Security Act of 1947 as amended by the Central Intelligence Agency Act of 1949 *

" Sec. 7. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102 (d) (3) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2, chapter 795 of the Act of August 28, 1935 (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency:

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Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, as amended (5 U.S.C. 947 (b))."

* The Federal Property and Administrative Services Act of 1949 *

This law transferred the National Archives establishment and its function to the General Services Administration. In addition, the Administrator of G.S.A. was authorized to survey Federal records to determine the efficiency of operations and for other reasons.

"Sec. 104. (a) The National Archives Establishment and its functions, records, property, personnel, obligations, and commitments are hereby transferred to the General Services Administration. There are transferred to the Administrator (1) the functions of the Archivist of the United States, except that the Archivist shall continue to be a member or chairman, as the case may be, of the bodies referred to in subsection (b) of this section, and (2) the functions of the Director of the Division of the Federal Register of the National Archives Establishment. The Archivist of the United States shall hereafter be appointed by the Administrator.

"(b) There are also transferred to the General Services Administration the following bodies, together with their respective functions and such funds as are derived from Federal sources: (1) The National Archives Council and the National Historical Publications Commission, established by the Act of June 19, 1934 (48 Stat. 1122), (2) the National Archives Trust Fund Board, established by the Act of July 9, 1941 (55 Stat. 581), (3) the Board of Trustees of the Franklin D. Roosevelt Library, established by the Joint Resolution of July 18, 1939 (53 Stat. 1062), and (4) the Administrative Committee established by section 6 of the Act of July 26, 1935 (49 Stat. 501), which shall hereafter be known as the Administrative Committee of the Federal Register. The authority of the Administrator under section 106 hereof shall not extend to the bodies or functions affected by this subsection.

"(c) The Administrator is authorized (1) to make surveys of Government records and records management and disposal practices and obtain reports thereon from Federal agencies; (2) to promote, in cooperation with the executive agencies, improved records management practices and controls in such agencies, including the central storage or disposition of records not needed by such agencies for their current use; and (3) to report to the Congress and the Director of the Bureau of the Budget from time to time the results of such activities."

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* The Federal Records Act of 1950 *

-RESPONSIBILITY FOR THE MANAGEMENT OF RECORDS-

Under the Federal Records Law specific responsibility for the management of records is vested in the Administrator of the General Services Administration and the Head of each Federal Agency.

-RESPONSIBILITY OF ADMINISTRATOR OF G.S.A.-

"Sec. 505. (a) The Administrator shall make provisions for the economical and efficient management of records of Federal agencies (1) by analyzing, developing, promoting, and coordinating standards, procedures, and techniques designed to improve the management of records, to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value, and (2) by promoting the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing, and servicing records.

"(b) The Administrator shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying such standards to records in their custody; and he shall notify the head of any Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of such agency that shall come to his attention, and assist the head of such agency in initiating action through the Attorney General for the recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.

"(c) The Administrator is authorized to inspect or survey personally or by deputy the records of any Federal agency, as well as to make surveys of records management and records disposal practices in such agencies, and shall be given the full cooperation of officials and employees of agencies in such inspections and surveys; Provided, That records, the use of which is restricted by or pursuant to law or for reasons of national security or the public interest, shall be inspected or surveyed in accordance with regulations promulgated by the Administrator, subject to the approval of the head of the custodial agency.

"(d) The Administrator is authorized to establish, maintain, and operate records centers for the storage, processing, and servicing of records for Federal agencies pending their deposit with the National Archives of the United States or their disposition in any other manner authorized by law; and to establish, maintain, and operate centralized microfilming services for Federal agencies.

"(e) Subject to applicable provisions of law, the Administrator shall promulgate regulations governing the transfer of records from the custody of one executive agency to that of another.

"(f) The Administrator may empower any Federal agency, upon the submission of evidence of need therefor, to retain records for a longer period than that specified in disposal schedules approved by Congress, and, in accordance with regulations promulgated by him, may withdraw disposal authorizations covering records listed in disposal schedules approved by Congress."

* * *

"Sec. 507 (a) The Administrator, whenever it appears to him to be in the public interest, is hereby authorized -

"(1) to accept for deposit with the National Archives of the United States the records of any Federal agency or of the Congress of the United States that are determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government;

"(2) to direct and effect, with the approval of the head of the originating agency (or if the existence of such agency shall have been terminated, then with the approval of his successor in function, if any), the transfer of records deposited (or approved for deposit) with the National Archives of the United States to public or educational institutions or associations; Provided, That the title to such records shall remain vested in the United States unless otherwise authorized by Congress; and

"(3) to direct and effect the transfer of materials from private sources authorized to be received by the Administrator by the provisions of subsection (e) of this section.

"(b) The Administrator shall be responsible for the custody, use, and withdrawal of records transferred to him: Provided, That whenever any records the use of which is subject to statutory limitations and restrictions are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of such records applicable to the head of the agency from which the records were transferred or to employees of that agency shall thereafter likewise be applicable to the Administrator, the Archivist, and to the employees of the General Services Administration, respectively: Provided further, That whenever the head of any agency shall specify in writing restrictions that appear to him to be necessary or desirable in the public interest, on the use or examination of records being considered for transfer from his custody to the Administrator, the Administrator shall impose such restrictions on the records so transferred, and shall not remove or relax such restrictions without the concurrence in writing of the head of the agency from which the material shall have been transferred (or if the existence of such agency shall have been terminated, then he shall not remove or relax such restrictions without the concurrence of the successor in function, if any, of such agency head): Provided, however, That statutory and other restrictions referred to in the provisos of this subsection shall not remain in force or effect after the records have been in existence for fifty years unless the Administrator

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by order shall determine with respect to specific bodies of records that such restrictions shall remain in force and effect for a longer period: And provided further, That restrictions on the use or examination of records deposited with the National Archives of the United States heretofore imposed and now in force and effect under the terms of section 3 of the National Archives Act approved June 19, 1934, shall continue in force and effect regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Administrator with the concurrence in writing of the head of the agency from which material has been transferred (or if the existence of such agency shall have been terminated, then with the concurrence in writing of his successor in function, if any). "

* * *

"Sec. 508 (a) The Administrator is hereby authorized, whenever he deems it necessary, to obtain reports from Federal agencies on their activities under the provisions of this title and the Act approved July 7, 1943 (57 Stat. 380-383), as amended July 6, 1945 (59 Stat. 434).

"(b) The Administrator shall, whenever he finds that any provisions of this title have been or are being violated, inform in writing the head of the agency concerned of such violations and make recommendations regarding means of correcting them. Unless corrective measures satisfactory to the Administrator are inaugurated within a reasonable time, the Administrator shall submit a written report thereon to the President and the Congress."

-RESPONSIBILITY OF AGENCY HEADS-

"Sec. 506. (a) The head of each Federal agency shall cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

"(b) The head of each Federal agency shall establish and maintain an active continuing program for the economical and efficient management of the records of the agency. Such program shall, among other things, provide for (1) effective controls over the creation, maintenance, and use of records in the conduct of current business; (2) cooperation with the Administrator in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and (3) compliance with the provisions of this title and the regulations issued thereunder.

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"(c) Whenever the head of a Federal agency determines that substantial economies or increased operating efficiency can be effected thereby, he shall provide for the storage, processing, and servicing of records that are appropriate therefor in a records center maintained and operated by the Administrator or, when approved by the Administrator, in such a center maintained and operated by the head of such Federal agency.

"(d) Any official of the Government who is authorized to certify to facts on the basis of records in his custody, is hereby authorized to certify to facts on the basis of records that have been transferred by him or his predecessors to the Administrator.

"(e) The head of each Federal agency shall establish such safeguards against the removal or loss of records as he shall determine to be necessary and as may be required by regulations of the Administrator. Such safeguards shall include making it known to all officials and employees of the agency (1) that no records in the custody of the agency are to be alienated or destroyed except in accordance with the provisions of the Act approved July 7, 1943 (57 Stat. 380 - 383), as amended July 6, 1945 (59 Stat. 434), and (2) the penalties provided by law for the unlawful removal or destruction of records.

"(f) The head of each Federal agency shall notify the Administrator of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Administrator shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from any other Federal agency whose records have been transferred to his legal custody.

"(g) Nothing in this title shall be construed as limiting the authority of the Comptroller General of the United States with respect to prescribing accounting systems, forms, and procedures, or lessening the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the General Accounting Office."

* The U.S. Code *

The U.S. Code quotes certain basic regulations and penalties with respect to the maintenance and protection of records in all Federal agencies. Title 5, Section 22 states:

"Sec. 22. Departmental regulations. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (R.S. Sec. 161)."

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Pertinent decisions based on this Section are as follows:

"Implied power of head of department. - The head of a government department does not have to show statutory authority for everything he does, reasonable latitude in the exercise of discretion being implied. (1924) 34 Op. Atty. Gen. 320."

"Power considered administrative. - The power conferred by this section is administrative and not legislative. U.S. v. George (Neb. 1913) 228 U.S. 14, 33 S. Ct. 412, 57 L. Ed. 712."

"Implied legislative ratification. - When Congress permits the orders of an executive department to be formulated as regulations, and published, and carried into effect, the legislative ratification must be implied. Maddox v. U.S. (1885) 20 Ct. Cl. 193, 197."

"Effect as to third persons. - No authority is created by this section which enables the heads of departments to make rules for the conduct of persons not connected with the departments, but such regulations, when made, are exclusively for the government of the department, and the conduct of its officers, and the preservation of the papers and property belonging to the department. (1883) 17 Op. Atty. Gen. 524."

"Adoption of regulations; usage. - Usages have been established in every part of the government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits. U.S. v. Macdaniel (Dist. Col. 1833) 7 Pet. 1, 14, 8 L. Ed. 587. See Benson v. Henkel (N.Y. 1905) 25 S. Ct. 569, 571, 198 U.S. 1, 49 L. Ed. 919.

"The regulations mentioned in this section need not be promulgated in any set form, nor in writing, but may consist of established usages, and practices which have become a kind of common law of the department. Haze v. Henkel (N.Y. 1910) 216 U.S. 462, 30 S. Ct. 249, 54 L. Ed. 569. See also International Ry Co. v. Davidson (C.C.A. N.Y. 1921) 273 F. 153, affirming (D.C. 1920) 271 F. 313, and reversed on other grounds (1922) 42 S. Ct. 179, 257 U.S. 506, 66 L. Ed. 341.

"The requirement by the department under whose authority an officer is acting, such as will make his action official, need not be prescribed by written rule or regulation. It may also be found in an established usage which constitutes the common law of the department, and fixes the duties of those engaged in its activities. In numerous instances, duties not completley defined by written rules are clearly established by settled practice. U.S. v. Birdsall (Iowa, 1914) 34 S. Ct. 512, 514, 233 U.S. 223, 53 L. Ed. 930."

"The archives of a department are not in the possession of the head of the department or chief of a bureau, but in the possession of the United States, and papers cannot be taken therefrom, by replevin against such officer, on a claim of them as private property. (1853) 6 Op. Atty. Gen. 7."

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"The records of Executive Departments are quasi-confidential in their nature, and must be classed as privileged communications whose production cannot be compelled by a court without express authority of law. And the head of an Executive Department may properly decline to furnish official records of his Department, or copies thereof, or to give testimony in a cause pending in court between private parties, respecting facts which have come to his knowledge officially, whenever in his judgment the production of such papers or the giving of such testimony might prove prejudicial, for any reason, to the government or to the public interest. (1905) 25 Op. Atty. Gen. 326, Sec, also, (1877) 15 Op. Atty. Gen. 378, 415; (1878) 16 Op. Atty. Gen. 24.

"Where the disclosure of facts stated, etc., in communications which are not privileged, as made in the course of official and public duties, would, in the judgment of the head of the department, be attended with serious damage to the public interest, the department would be justified in representing to the court that, upon public considerations, it declined to furnish such communications. (1877) 15 Op. Atty. Gen. 415, 416."

"Force and affect of regulations as law generally. - A regulation prescribed by the head of a department, within this section, when not inconsistent with law, has the force of law. Cahn v. U.S. (Kan. 1894) 14 S. Ct. 513, 517, 152 U.S. 221, 38 L. Ed. 415; Ex parte Reed (1879) 100 U.S. 13, 25 L. Ed. 538; (1895) 21 Op Atty. Gen. 122.

"A regulation of a department, in conformity to a particular act of Congress, becomes a part of the law, and of a binding force as if incorporated in the body of the law itself. Wilkins v. U.S. (Pa. 1899) 96 F. 839, 841, 37 C.C.A. 588, writ of certiorari denied (1899) 20 Sup. Ct. 1023, 175 U.S. 727, 44 L. Ed. 339; U.S. v. Sibray (C.C. Pa. 1910) 178 F. 144, reversed on other grounds (1911) 185 F. 401, 107 C.C.A. 483; U.S. v. Barrows (D.C. Pa. 1869) Fed. Cas. No. 14,529, 1 Abb. U.S. 351; In re Aliens (D.C. N.Y. 1916) 231 F. 335; Peterson v. U.S. (C.C.A. Hawaii, 1923) 287 F. 17."

"While the head of an executive department is limited in what he does by the law, he need not show express statutory authority for an administrative detail incident to a power conferred. U.S. v. Macdanial (Dist. Col. 1893) 7 Pet. 1, 14, 8 L. Ed. 587; Small v. U.S. (1909) 45 Ct. Cl. 13; (1911) 28 Op. Atty. Gen. 549."

Title 18, Paragraph 2071.

"2071. Concealment, removal, or mutilation generally.

"(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial

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or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

"(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States."

* The Defense Production Act *

"Section 705 (e) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determined that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both."

"Section 710 (e) Whoever, being an officer or employee of the United States or any department or agency thereof (including any Member of the Senate or House of Representatives), receives, by virtue of his office or employment, confidential information, and (1) uses such information in speculating directly or indirectly on any commodity exchange, or (2) discloses such information for the purpose of aiding any other person so to speculate, shall be fined not more than \$10,000 or imprisoned not more than one year, or both. As used in this section, the term "speculate" shall not include a legitimate hedging transaction, or a purchase or sale which is accompanied by actual delivery of the commodity."

* The Federal Reports Act *

"Section 4. (a) In the event that any information obtained in confidence by a Federal agency is released by that agency to another Federal agency, all the provisions of law (including penalties) which relate to the unlawful disclosure of any such information shall apply to the officers and employees of the agency to which such information is released to the same extent and in the same manner as such provisions apply to the officers and employees of the agency which originally obtained such information; and the officers and employees of the agency to which the information is released shall in addition be subject to the same provisions of law (including penalties) relating to the unlawful disclosure of such information as if the information had been collected directly by such agency.

"(b) Information obtained by a Federal agency from any person or persons may, pursuant to this Act, be released to any other Federal agency only if (1) the information shall be released in the form of statistical

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totals or summaries; or (2) the information as supplied by persons to a Federal agency shall not, at the time of collection, have been declared by that agency or by any superior authority to be confidential; or (3) the persons supplying the information shall consent to the release of it to a second agency by the agency to which the information was originally supplied; or (4) the Federal agency to which another Federal agency shall release the information has authority to collect the information itself and such authority is supported by legal provision for criminal penalties against persons failing to supply such information."

* * *

"Section 7. As used in this Act -

"(c) The term "information" means facts obtained or solicited by the use of written report forms, application forms, schedules, questionnaires, or other similar methods calling either (1) for answers to identical questions from ten or more persons other than agencies, instrumentalities, or employees of the United States or (2) for answers to questions from agencies, instrumentalities, or employees of the United States which are to be used for statistical compilations of general public interest."

* Administrative Procedure Act *

ADMINISTRATIVE PROCEDURE ACT

"Section 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency-

"(a) RULES. -- Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

"(b) OPINIONS AND ORDERS. -- Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

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"(c) PUBLIC RECORDS. -- Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

* Bureau of the Budget Bulletin 51-14 *

"This Bulletin deals with the plans of all Federal agencies with respect to the availability of indispensable records for emergency use. These plans for the protection of indispensable records were enumerated in a memorandum from the Administrator of General Services Administration to the heads of Federal Agencies dated October 31, 1950. This memorandum transmitted an Outline of Minimum Standards for an Agency's Documentary Protection Program, and identified indispensable documents as follows:

"1. Identification of Indispensable Documents

"(a) Standards for the determination of indispensable documentary materials cannot be established categorically. Records selected for protection must be of such character that their loss would seriously imperil the performance of functions essential to the maintenance of the U. S. Government under emergency conditions.

"(b) Priorities as to indispensability are suggested as follows:

"(1) Records vital to the military effort of the nation -- the operations of the Armed Forces.

"(2) Records vital to the mobilization and protection of the material and manpower resources of the nation.

"(3) Records vital to the maintenance of public health, safety, and order.

"(4) Records vital to the protection of the rights of individual citizens."

Implementing 51-14 in the Central Intelligence Agency - see exhibit 1 for the details of this activity.

* G.S.A. Regulations *

A copy of these regulations is attached as exhibit 2.

* C.I.A. Records Program *

See exhibit 3 for the details of this program.